In The

Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; AND RUSSELL S. GOULD, DIRECTOR, CALIFORNIA DEPARTMENT OF FINANCE,

Petitioners,

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND DIANA P. BERTOLLT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May a state limit a new resident's AFDC benefits to the level of benefits received or receivable in the state of prior residence for a period of a year, with full benefits to be provided thereafter?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

No. _____

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The Petitioners, Eloise Anderson, Director, California Department of Social Services, California Department of Social Services and Russell S. Gould, Director, California Department of Finance[1], ("California") respectfully

[1] Mr. Gould was appointed as the Director of the Department of Finance on August 1, 1993, and as such, is the successor

request this Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this action on April 29, 1994.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth circuit in *Green v. Anderson*, ___ F.3d ___ (9th Cir. 1994) is reproduced in the Appendix at A1. The order of the trial court granting the respondents' motion for preliminary injunction and referred to in the Ninth Circuit opinion is also reproduced in the Appendix at A3. 811 F.Supp 516 (E.D. Cal. 1993).

JURISDICTION

On April 29, 1994, the United States Court of Appeals for the Ninth Circuit ("the Ninth Circuit") issued its opinion affirming the preliminary injunction of the United States District Court ("the District Court") that a California welfare statute operates as a penalty on migration and therefore must be subjected to strict scrutiny. This Court has jurisdiction to review, by way of writ of certiorari, the judgment or decree of the Court of Appeals. 28 U.S.C. § 1254(1).

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in interest to Thomas Hayes, who was named in the original pleadings. Mr. Gould is automatically substituted as a party in place of Mr. Hayes pursuant to the provisions of Rule 25(d) of the Federal Rules of Civil Procedure.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Fourteenth Amendment: Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Welfare and Institutions Code:

Section 11450.03.

> "(a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.
>
> "(b) This section shall not become operative until the date of approval by the United States Secretary of Health and Human Services necessary to implement the provisions of this section so as to ensure the continued compliance of the state plan for the following:
>
> "(1) Title IV of the federal Social Security Act (Subchapter 4 (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code).

"(2) Title IX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code)."

(Added by Stats 1992, c. 722 (S.B.485), § 37.5 eff. Sept. 15, 1992.)

STATEMENT OF THE CASE

In 1992, the California Legislature enacted Welfare and Institutions Code section 11450.03 ("the Statute") as a means to reduce welfare expenditures. Impetus for the statute came from the existence of continuing, severe economic and fiscal problems in California (Declaration of Dennis Hordyk, "Hordyk Declaration," A21)[2] and the California constitutional provision mandating a balanced budget.[3] Failure to implement the Statute was expected to result in additional unbudgeted state General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93 and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, A22.)

The Statute became effective upon approval by the United States Secretary of Health and Human Services

[2] All evidentiary materials reproduced in the Appendix were presented to the trial court.

[3] "Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided." (California Constitution, article IV, section 12(a).)

necessary to implement the provisions of this section.[4] The Secretary gave approval on October 29, 1992, and the California Department of Social Services began applying the residency limitation shortly thereafter. (District Court Order, A4.)

A complaint for declaratory and injunctive relief ("complaint") was filed on December 21, 1992. The complaint named the California Department of Social Services, and the directors of the California Departments of Social Services and Finance as defendants. Plaintiffs are a class of California residents who have applied or will apply for benefits on or after December 1, 1992 and who have not resided in California for twelve consecutive months immediately preceding their application for aid. Jurisdiction was conferred on the District Court by 28 U.S.C. § 1343(a)(3). This suit was brought pursuant to 28 U.S.C. § 1983. The gist of plaintiffs' action was that the Statute violated various provisions of the United States Constitution and the constitutional right to travel.

The District Court issued a temporary restraining order on December 22, 1992, enjoining California from implementing the provisions of the Statute pending a hearing on plaintiffs' request for a preliminary injunction.

At the hearing on plaintiffs' request for a preliminary injunction, plaintiffs sought to block application of the residency requirement as provided for in the Statute. By

[4] On July 13, 1994, the Ninth Circuit vacated the federal waivers necessary to implement the provisions of this section. *Beno v. Shalala*, ___ F.3d ___ (No. 93-16411). California anticipates filing a petition for rehearing.

declaration, plaintiffs averred that they suffered irreparable injury because, under the Statute, they would not receive the same AFDC grant that they would have received if they had already resided in California for the preceding twelve months. Plaintiffs averred they were fleeing abusive relationships rather than seeking higher welfare grants in migrating to California. (District Court Order, A5.)

California demonstrated the severe budget deficit facing the state – so severe that California will have no reserve available to cover the costs of unforeseen events. (Hordyk Declaration, A21.) California also showed that failure to implement the Statute would result in additional, unbudgeted state General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93, and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, A22.) Because of the severity of the budget deficit, there were no funds appropriated by the 1992-93 state budget to pay the additional costs resulting from a failure to implement the Statute. (Hordyk Declaration, A22.)

The hearing on plaintiffs' request for a preliminary injunction was held on January 28, 1993. The District Court ruled from the bench, and issued the injunction. (District Court Order, A3.)

The District Court found that the Statute implicated a constitutional right to freedom of travel or migration, that a strict scrutiny analysis was therefore required to review the Statute, that California could not show a compelling reason for the Statute, and that plaintiffs had demonstrated they would suffer irreparable injury if the injunction were not granted. (District Court Order, A3.)

California filed an appeal from the District Court's order. On April 29, 1994, the Ninth Circuit summarily affirmed the District Court's order. (Ninth Circuit Order, A2.) On June 13, 1994, the Ninth Circuit corrected its previous order and ordered that its April 29, 1994 order be published. The correction was not substantive. (Ninth Circuit Order, A2.)

REASONS FOR GRANTING THE PETITION

A petition for writ of certiorari is granted by this Court " . . . when there are special and important reasons therefore." Supreme Court Rule 10.1. Review may be granted when a United States Court of Appeals has decided an " . . . important question of federal law which has not been, but should be, settled by this Court. . . . " *Id.*

Thirty-five years ago, this Court struck down a state law that made new residents *ineligible* for welfare benefits for a year because it created an "invidious classification" that was at odds with the constitutional right of interstate migration. *Shapiro v. Thompson*, 394 U.S. 618, 629, 633 (1969). Three years later, this Court overturned a state law *disqualifying* new residents from voting for a year after moving. *Dunn v. Blumstein*, 405 U.S. 330 (1972). Two years after that, this Court voided a state residency requirement that made new county residents *ineligible* for nonemergency medical care at county expense for a year because it penalized migration. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

More than a decade later, this Court struck down several state laws that created *permanent* distinctions based on the length of state residency. *Zobel v. Williams*, 457 U.S. 55 (1982) (size of payments from oil revenues dependent upon years of residence in Alaska); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (preferences for veterans based on length of state residency).

In none of these prior cases, however, has this Court decided, or even given guidance to the lower courts about how to answer the question this case squarely presents: Does a statute that is not intended to deter interstate migration and, in fact, does not deter migration, nonetheless penalize persons who migrate because it leaves new residents at the same level of welfare benefits they would have received in their state of prior residence for a limited period of time?

This Court should seize this opportunity to provide essential guidance to the states and the lower courts on this important question of constitutional law.

I

THE STATUTE DOES NOT OPERATE AS A PENALTY ON MIGRATION AND THEREFORE SHOULD BE SUBJECTED TO A REASONABLE BASIS ANALYSIS

Within the broad parameters of federal AFDC requirements, states have a great deal of discretion in determining the standard of need and the level of benefits. 42 U.S.C. §§ 601, et seq. *Largo v. Sunn*, 835 F.2d 205, 208 (9th Cir. 1987). It is constitutionally permissible both

to establish a benefit level below the standard of need and to set benefits which will encourage gainful employment. It is also constitutionally permissible to disregard family size in setting benefit levels. *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). Title 42 U.S.C. § 601 states that the purpose of the AFDC program is to, in part, " . . . furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State. . . . " Thus, to the extent that the Statute operates as a reduction of benefits, the Statute is constitutionally permissible.

In *Shapiro v. Thompson*, 394 U.S. 618 (1969), this Court held that legislation which denied welfare assistance to new residents of less than one year duration was constitutionally impermissible, as such legislation chilled the right to engage in interstate travel.

Although at first glance, *Shapiro* would seem to bar any restriction on the right to travel, that reading of the case is unjustified. In a footnote, this Court indicated:

> "We imply no view of the validity of waiting-period *or* residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." (Emphasis original.)
>
> (*Shapiro*, 394 U.S. at 638, fn 21.)

Therefore, the issue is not whether the Statute deters travel but whether, in the absence of a compelling interest, the Statute imposes a penalty upon the exercise of the constitutional right to travel.

In this case, the Statute's impact on travel is incidental to its purpose of reducing state expenditures. As to the level of AFDC benefits, persons impacted by the Statute are placed in a position identical to that which they occupied before departing their state of former residence.[5] The Statute does not provide a penalty by depriving new residents of the basic necessities of life. Persons subject to the Statute receive the same amount of AFDC benefits which was constitutionally permissible in their state of prior residence. Moreover, there is no two-tier system for either Medicaid benefits (Medi-Cal in California) or for Food Stamps. In fact, for every three dollars on AFDC grant is reduced by operation of the Statute, Food Stamps are increased by approximately one dollar. (See Declaration of Michael C. Genest ("Genest Declaration" A26.)) In addition, all California AFDC recipients may be entitled to a Special Needs Allowance, including an allowance for homeless assistance. (Genest Declaration, A26.) There is simply a delay in the receipt of the same level of benefits as persons who have lived in California for one year or more. Thus, the impact of the Statute is

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[5] "In both 1980 and 1985 all but five of the states had a cost of living within ten percent of the national average . . . when all states are considered together, the variation in AFDC benefits is four times larger than the variation in the cost of living." Peterson, et al., Welfare Magnets (The Brookings Institute, 1990) p. 11. Thus, there is not a significant relationship between a state's cost of living and its welfare payments.

nothing like that which would result from the statutes at issue in *Shapiro, Memorial Hospital* and *Dunn*.

The statute does not provide for an outright denial of eligibility for benefits such as that condemned in *Shapiro*, but is instead more akin to the residence requirement imposed by states on new residents wanting to qualify for in-state tuition which this Court has upheld. *Vlandis v. Kline*, 412 U.S. 441, 453 (1973); *Starns v. Malkerson*, 326 F.Supp 234 (D. Minn. 1970), aff'd on appeal, 401 U.S. 985 (1971). So long as the new resident is not deprived of an opportunity to establish residency so as to gain the benefit of in-state tuition, those benefits may be delayed consistent with the United States Constitution.

Thus, because the statutes at issue in *Shapiro* provided for the outright denial of welfare benefits and California's Statute does not affect eligibility, the Statute does not penalize the right to travel to the extent required to trigger a strict scrutiny analysis. This Court, in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 258 (1974) noted that "some 'waiting period[s] . . . may not be penalties.' " (Quoting *Shapiro*.) A reasonable basis analysis should be applied which is the appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

While the right to travel may be important, its source is not explicitly stated in any provision of the United States Constitution, as acknowledged in *Shapiro*. 394 U.S. 618, 630. As a general matter, a state is under no duty to underwrite the costs of the exercise of Constitutional rights. *Harris v. McRae*, 448 U.S. 297, 317-318 (1980). Here,

California has not prohibited travel; it has simply limited welfare benefit levels for recent California residents to no more than they received or would have received in their State of prior residence. AFDC benefits remain available for recent California residents.

Furthermore, unlike the state law at issue in *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), the Statute does not establish a permanent classification of benefit recipients who receive a lower amount of benefits. The statute at issue in *Soto-Lopez* impermissibly offered state civil service employment preference to veterans who were residents of New York when they entered military service, thus creating a permanent class of favored veterans. This Court reviewed the New York statute using a strict scrutiny analysis. The California Statute has much less impact on travel than the New York statute, because after one year of residency, a new California resident is indistinguishable from California residents of longer duration for purposes of AFDC benefits.

Thus, the Statute should not be subjected to strict scrutiny. *Shapiro* does not mandate strict scrutiny because the Statute's impact on travel is incidental to its primary purpose of reducing state AFDC expenditures by a temporary reduction in benefit levels. Statutes, such as the one at issue here, with a primary focus on reducing the cost of public welfare assistance, with only an incidental impact on travel, should be analyzed under the same reasonable basis standard to which public welfare assistance statutes are normally subjected. *Dandridge v. Williams*, 397 U.S. 471, 485.

II

CALIFORNIA'S INTEREST IN REDUCING WELFARE COSTS IS SUFFICIENT TO JUSTIFY THE USE OF A TWO-TIER SYSTEM OF DISTRIBUTING AFDC BENEFITS

Contrary to statements made by the District Court, and adopted by the Ninth Circuit, California's interest in reducing welfare costs is sufficient to justify the use of a two-tier system of distributing AFDC benefits.

The District Court's conclusion is derived from its belief that this Court's decisions mean that *any* differential treatment of welfare recipients based on length of state residency necessarily penalizes travel and, as such, cannot be justified by state budgetary concerns. However, as shown above, the Statute does not penalize the right to travel to the extent required to trigger a strict scrutiny analysis. Here, the correct analysis is the reasonable basis or rationality test. The Statute passes that test. It is constitutional because the continuing and worsening budget problems in California provide a rational basis for a statute that lowers state welfare expenditures.

When a state distributes benefits unequally, the distinctions it makes are subject to review under the Equal Protection Clause of the Fourteenth Amendment. The statutory scheme must pass the rationality test at a minimum. *Zobel v. Williams*, 457 U.S. 55, 60 (1982). Generally, a law will survive that scrutiny if the distinction rationally furthers a legitimate state purpose.

Durational residency requirements have been found constitutionally permissible if the justifications are sufficient. *Sosna v. Iowa*, 419 U.S. 393 (1975). In *Sosna*, the

state's longstanding and virtually exclusive interest in regulating domestic relations justified the impact on travel of a statute that required that a petitioner in a divorce action be a resident of Iowa for one year preceding the filing of the petition. 419 U.S. at 406, California's interest in maintaining a balanced budget is at least as important as a state's regulating domestic relations.

The plaintiff in *Sosna* was not irretrievably foreclosed from obtaining some part of what she sought. In the present case, plaintiffs' eligibility for public assistance is not in question. A potential AFDC recipient coming to California still may apply for, and, if eligible, obtain assistance, but at a rate equal to what that potential recipient would have received in the state of prior residence. Here, as in *Sosna*, the justifications for the durational residency requirement are rational, and hence, legitimate. A grant level which is constitutionally permissible in one state should not become unconstitutional in another state just because the grantee made a unilateral decision to change residence.

Here, the budget problems confronting California outweigh plaintiffs' claims. The Statute is a legislative solution designed to confront problems not apparent in *Shapiro* and its progeny. The Statute uses a temporary classification which does not permanently deprive plaintiffs of any interest. Because the effect of the Statute is neutral, the Statute is constitutionally permissible since it rests upon a rational basis. To the extent that *Shapiro* and its progeny appear to hold that financial considerations can never justify durational residency requirements, that holding should be re-examined.

The Statute easily passes the rational basis test. The unstated but plain purpose of the Statute is to reduce California's welfare expenditures. California was forced to reduce expenditures in the AFDC program in fiscal year 1990-91, in fiscal year 1991-92, and in fiscal year 1992-93 because of severe gaps between projected revenues and expenditures. Welfare and Institutions Code sections 11450.01, 11450.02 and 11450.03 (the Statute) were all designed to temporarily reduce aid grants in the AFDC program. Legislative Counsel's Digest of Senate Bill 485, added by Stats. 1992, chapter 722, No. 10 West's Cal. Legis. Service, p. 2898;[6] A29. Reducing state expenditures, especially in the midst of a continuing and growing budget deficit, is certainly a legitimate state purpose.

The Statute achieves its purpose of reducing state expenditures by temporarily limiting the level of AFDC grants to those who choose to move to California. As noted above, the Statute does not prevent people from moving to California; it simply renders neutral, for a period of one year, one of the factors a person might consider when contemplating a move to California.

Scholars have long observed that the fact and perception of welfare-induced interstate migration have had significant effects on state AFDC policies. Peterson, et al.,

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[6] The need to reduce state expenditures required in fiscal year 1992-93 is demonstrated by the fact that the Governor reduced the appropriation for the support of his office by 15 percent. His message stated, "I take this action because of the unprecedented fiscal constraints and limited resources in the General Fund." Budget Act of 1992, Statutes 1992, chapter 587, No. 9 West's Cal. Legis. Service, p. 1832, A31.

Welfare Magnets (The Brookings Institution, 1990) p. 83. Two important studies have shown that the effect of welfare benefits on migration is strong and significant. *Id.*, at 58. Furthermore,

> " . . . as people make major decisions about whether they should move or remain where they are, they take into account the level of welfare a state provides and the extent to which that level is increasing. The poor do this roughly to the same extent that they respond to differences in wage opportunities in other states." *Id.*, at 83.
>
> "A state with high welfare benefits provides incentives both for the poor to remain in the state and for the poor in other states to move there." *Id.*, at 20.

Whether or not the Statute constitutes wise policy is a decision which rests exclusively with the California Legislature. The degree to which the Statute relieves the state's fiscal crisis is also of no constitutional significance. As noted above, the setting of AFDC benefit levels is a political decision by the Legislature. " . . . [T]he Constitution does not empower this Court to second guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970).

Recognizing the political process involved in the state's determination of the level of benefits, the Third Circuit, in *Everett v. Schramm*, 772 F.2d 1114 (3rd Cir. 1985), discussed the policy of political accountability in

the failure of Delaware's standard of need to reflect inflation.

> "Under the statutory scheme, AFDC recipients and activists must avail themselves of the political process, not the judicial process . . . to effect the changes they seek." *Id.* at p. 1122.

Like Delaware's decision to reduce benefit levels, California's reduction of AFDC benefits is a political decision subject to public scrutiny. Here the legitimate state purpose is to reduce expenditures so that scarce resources may be preserved for all, including public assistance.

III

IF *SHAPIRO* AND ITS PROGENY COMPEL INVALIDATION OF THE CALIFORNIA STATUTE, THEN THOSE PRINCIPLES SHOULD BE RECONSIDERED IN LIGHT OF THE FISCAL CRISES FACED BY STATES AND THE NEED FOR NON-DRASTIC OPTIONS TO ADDRESS THEM

The District Court concluded that the principles established by *Shapiro* and is progeny compelled invalidation of the Statute, stating if the purpose of the Statute was to " . . . conserve limited state funds in the hope that the state may do more for those who now and in the past have depended on the state, such a purpose, if laudable, is yet unconstitutional." (District Court Order, A16.) This Court should accept review of the Ninth Circuit's decision so that, if necessary, the principles of *Shaprio* can be reconsidered and modified in light of the fiscal crises faced by states and the need for non-drastic options to address them.

This Court does not lightly reconsider a precedent, and *stare decises* is the preferred course in constitutional adjudication. *United States v. Dixon*, ___ U.S. ___, 113 S. Ct. 2849, 2864 (1993). However, *stare decises* is "not an 'inexorable command,' " *Planned Parenthood v. Casey*, ___ U.S. ___, 112 S. Ct. 2791, 2808 (1992), and "it has less power in constitutional cases, where, save for constitutional amendments, this Court is the only body able to make needed changes." *Webster v. Reproductive Health Serv.*, 492 U.S. 490, 518 (1989). As this Court said in *Dixon:*

> "[W]hen governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.' "

113 S. Ct. at 2864 (quoting *Payne v. Tennessee*, 501 U.S. ___, 111 S. Ct. 2597, 2600 (1991)).

The result of the District Court and the Ninth Circuit opinions following *Shapiro* and its progeny is that California is precluded from creating two-tier public assistance programs even where the Legislature has carefully avoided a scheme that would operate as a penalty on migration. In light of the budget crises that California and other states have been facing, the principles of *Shapiro* are unworkable and should be reconsidered.

Thus, this Court should re-examine whether a classification which imposes *any* penalty upon indigent persons who have exercised their constitutional right of interstate migration must be justified by a compelling state interest and that conservation of the taxpayers' purse is not a sufficient state interest to sustain a durational residency requirement relating to public assistance expenditures.

The principle that *any* penalty upon people who have exercised their right to travel must be justified by a compelling state interest should be replaced by an "undue burden" analysis which balances burdens on the right to travel against the interests supporting the governmental interest served by the challenged statute.

In his dissent in *Shapiro*, Justice Harlan raised the following question: " . . . whether a one-year welfare residence requirement amounts to an undue burden upon the right to interstate travel." *Shapiro* at 663 (Harlan, J. dissenting.) An undue burden analysis was used by Justices O'Connor, Kennedy and Souter in the opinion of this Court in *Planned Parenthood v. Casey*, ___ U.S. ___, 112 S. Ct. 2791, 2818-2220 (1992), a case involving a challenge, on due process grounds, to the constitutionality of amendment to the Pennsylvania abortion statute. Under this analysis, this Court stated that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." *Casey* at 2821. Furthermore, this Court appears to have followed such an analysis in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 263 (1974) where this Court stated that "[t]he conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement. . . . "

Thus, in instances where state legislation is challenged by those claiming a constitutional deprivation, this Court should implement a balancing test between the governmental interests and the claimed constitutional deprivation. Only if the state legislation imposes an

undue burden, i.e., a substantial obstacle to the exercise of a constitutional right, should it be struck down.

Here, an undue burden on the right to travel would be a substantial obstacle to indigents seeking to migrate. As noted above, the California statute is carefully crafted to impose no burden on the right to travel. Thus, under an undue burden analysis, there is no substantial obstacle to indigents seeking to migrate, and California would have to show only a rational basis for a two-tier public assistance program.

The second principle of *Shapiro* and its progeny that must be re-examined is the principle that conservation of the taxpayers' purse is not a sufficient state interest to sustain a durational residency requirement relating to public assistance expenditures.

At the time California attempted to implement its Statute, California faced a budget deficit so severe that the state had no reserve available to cover the costs of unforeseen events. Failure to implement California's Statute was expected to result in additional, unbudgeted California State General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93, and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, A22.)

Thus, this Court should grant the Petition for Writ of Certiorari in order to recognize the overwhelming fiscal crises confronting California and other states. States must be allowed to assert fiscal reasons to justify statutes implementing welfare reform. The principle that fiscal considerations alone are not sufficient to justify carefully crafted residency requirements may have been reasonable

during times of plenty but is no longer reasonable when California, as well as other states, is struggling to remain solvent. Fiscal concerns should be considered by courts when evaluating statutes. Justice Harlan, in his dissenting opinion in *Shapiro* at 673, mentioned several possible governmental interests which may be used to justify a durational residency requirement, including fiscally related reasons such as making funds more available for all. California has been forced to implement the Statute because diminishing financial resources have made it more difficult for California to provide for all of its residents, including recent ones.

CONCLUSION

California is mandated to provide services to all of its residents. These services include public education, the state judicial system, the state highway system, medical services for the indigent, the correctional system, mental health services, fire and police protection, and a licensing system that regulates many important privately provided goods and services. All of these governmental services are competing for limited financial resources. All discretionary programs run the risk of being cut by the California Legislature in the absence of adequate financial resources. The maintenance of a strong, fiscally sound state government must be deemed an interest important

enough that a change in AFDC benefit levels such as that mandated by the Statute can be upheld.

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July 25, 1994

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P. BERTOLLT, on behalf of themselves and all others situated, *Plaintiffs-Appellees,* v. ELOISE ANDERSON, individually and in her official capacity as Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; and THOMAS HAYES, Director, California Department of Finance, *Defendants-Appellants.*	No. 93-15306 D.C.No. CV S-92-2118-DFL/JFM ORDERS

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Argued and Submitted
April 13, 1994 – San Francisco, California

Filed April 29, 1994
Amended June 13, 1994

Before: Alfred T. Goodwin, William A. Norris, and Diarmuid F. O'Scannlain, Circuit Judges.

COUNSEL

Theodore Garelis, Deputy Attorney General, Sacramento, California, for the defendants-appellants.

Mark D. Rosenbaum, ACLU Foundation of Southern California, Los Angeles, California, for the plaintiffs-appellees.

ORDER

We AFFIRM for the reasons stated in the district court's order. *Green v. Anderson*, 811 F. Supp. 516 (E.D. Ca. 1993). This panel will retain jurisdiction over the case.

ORDER

This Court's Order, filed April 29, 1994, is hereby corrected by inserting the words "the preliminary injunction" between "AFFIRM" and "for."

The April 29, 1994 Order is redesignated ORDER FOR PUBLICATION.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P. DERTOLLT, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ELOISE ANDERSON, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, THOMAS HAYES,

Defendants.

_____/

Civ. S-92-2118

MEMORANDUM OF DECISION AND ORDER

(Filed Jan. 28, 1993)

Plaintiffs are California residents who have moved or relocated to the State of California within the past twelve months and seek welfare benefits under the Aid to Families with Dependent Children ("AFDC") program.[1] California recently enacted a durational residency requirement of one year for full AFDC benefits; until the applicant for AFDC has resided in the State for twelve consecutive months, the applicant's level of benefits may not exceed what the family would have received in the

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[1] AFDC is a cooperative federalism program created by the Social Security Act of 1935. 42 U.S.C. §§ 601-609 (1982). AFDC benefits are financed jointly by the federal government and the states. The program is administered by the states under a plan approved by the Secretary of Health and Human Services. 42 U.S.C. § 601 (1982). Subject to certain limitations in federal law, the states have the power to set the standard of need and level of benefits. *King v. Smith*, 392 U.S. 309, 334 (1968); *Largo v. Sunn*, 835 F.2d 205, 208 (9th Cir. 1987).

state of prior residence. Cal. Welf. & Inst. Code § 11450.03 (West Supp. 1992).[2] The residency requirement became effective upon approval by the United States Secretary of Health and Human Services. The Secretary gave approval on October 29, 1992,[3] and the California Department of Social Services began applying the residency limitation shortly thereafter.

Plaintiff Deshawn Green was a Sacramento resident for twelve years and then moved to Louisiana in 1985. She had two children in Louisiana. In December 1992, Green decided to move back to California where her mother lives. The full monthly California AFDC grant for a family of three is $624; under the two tier system for the next twelve months Green will receive $190 a month

[2] Section 11450.03 of the Welfare and Institutions Code provides:

> Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

[3] The Secretary gave approval in the form of a waiver. *See* Pls.' Ex. 2. The waiver also approves a 1.3% reduction in benefits and permits the State to further reduce AFDC benefits to all recipients by up to 5%.

Because the validity of the Secretary's waiver is called into question by this lawsuit, the January 4, 1993, the court requested the United States to file an amicus brief in support of the Secretary's action. By letter dated January 21, 1993, the day before its brief was to be filed, the United States declined to file an amicus brief and made no request for additional time.

which is what she would have received in Louisiana. Plaintiff Debby Venturella came to California in December 1992. She has one child and is pregnant. She had been living in Oklahoma for six weeks when she decided to move to California where her parents live. She was not receiving AFDC benefits in Oklahoma. Under the two tier system, after her child is born, Venturella will be limited to AFDC benefits of $341, which is the Oklahoma level for a family of three. Finally, plaintiff Diana Bertollt moved to California from Colorado to be with relatives. She has one child and will be limited to $280 a month – the Colorado benefit – as opposed to the full California amount of $504 for two family members.

All three plaintiffs allege that they moved to California to escape abusive family circumstances. Green Decl., ¶ 3; Venturella Decl., ¶ 12; Bertollt Decl., ¶ 2. There is no dispute that all three plaintiffs are bona fide residents of the State of California, and the State acknowledges that plaintiffs are entitled to AFDC benefits – albeit at the reduced level – as California residents. *See* Defs.' Opp'n, 19:14-15; Cal. Welf. & Inst. Code § 17100 (West 1991). By separate order the court will provisionally certify this matter as a class action.[4]

[4] Plaintiffs have requested a provisional order certifying that this proceeding be maintained as a class action consisting of "all present and future AFDC applicants and recipients who have applied or will apply for AFDC on or after December 1, 1992, and who will be denied full California AFDC benefits because they have not resided in California for twelve consecutive months immediately preceding their application for aid." Defendants have filed a notice of non-opposition to the motion for provisional class certification.

The State of California budget allocates nearly $6 billion for AFDC benefits in 1992-93. The California Department of Finance estimates that the durational residency requirement at issue here will save the State $8.4 million in the 1992-93 fiscal year and $22.5 million in the 1993-94 fiscal year. Hordyk Decl., ¶ 5.[5]

Plaintiffs now move for a preliminary injunction blocking application of the durational residency requirement in section 11450.03(a) of the California Welfare and Institutions Code. A temporary restraining order was issued December 22, 1992 by the Honorable Milton L. Schwarz and remains in effect by stipulation.

I.

The State's two tier system for AFDC benefits implicates the constitutional right to freedom of travel or migration. The right to migrate from one state to another "occupies a position fundamental to the concept of our Federal union" and "has long been recognized as a basic right under the Constitution." *United States v. Guest*, 383 U.S. 745, 757-58 (1966). Although the right to travel is not protected by explicit provision in the Constitution, as it

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An April 1990 study by the State Department of Social Services found that 6.6% of the State's existing AFDC caseload resided in another state within the year before applying for benefits in California. Healy Decl., ¶ 5.

[5] Since California's fiscal year begins in July, the 1992-93 figures represent only a partial year's savings.

was in the Articles of Confederation,[6] the Supreme Court repeatedly has held that such a right inheres in the concept of a union. *See, e.g., id.; Zobel v. Williams*, 457 U.S. 55, 67 ("I find its unmistakable essence in that document that transformed a loose confederation of States into one Nation") (Brennan, J., concurring).[7]

The right of migration protects not only physical movement, and forbids direct restrains on interstate migration,[8] but also "protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 905 (1986). It is this equal treatment aspect of the right to migration – rather than direct barriers to movement – that has been most

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[6] Article IV of the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State."

[7] Different provisions of the constitution have been relied upon as the textual source of the right to migrate, including the Privileges and Immunities Clause of Art. IV, see *Zobel v. Williams*, 457 U.S. 55, 71 (1982) (O'Connor, J., concurring), the Privileges and Immunities Clause of the Fourteenth Amendment, see *Edwards v. California*, 314 U.S. 160, 177-78 (1941) (Douglas, J., concurring), the Commerce Clause, see *Edwards*, 314 U.S. at 173-74, and the Equal Protection Clause of the Fourteenth Amendment, see *Hooper v. Bernalillo County Assessor*, 472 U.S. 617, 618 n.6 (1985).

[8] *See The Passenger Cases*, 48 U.S. (7 How.), 283 (1849) (invalidating tax on passengers from foreign ports); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867) (invalidating tax on persons leaving the state); *Edwards v. California*, 314 U.S. 160 (1941) (invalidating state law making it a crime to bring into the state a non-resident knowing that the non-resident is indigent).

important in the more recent cases. The Court consistently has rejected state preferences for longer term residents, even when motivated by an altruistic desire to do more for the state's "own:"

> The State may not favor established residents over new residents based on the view that the State may take care of 'its own,' if such is defined by prior residence. Newcomers, by establishing bona fide residence in the State, become the State's 'own' and may not be discriminated against solely on the basis of their arrival in the State after [a fixed date].

Hooper v. Bernalillo County Assessor, 472 U.S. 612, 623 (1985).

Because of this right to equal treatment without regard to the length of residency, the Court has almost invariably found that durational residency requirements are unconstitutional. Such residency requirements distinguish not between bona fide residents and non-residents but between residents based on the length of their residency in the state.

In *Shapiro v. Thompson,* 394 U.S. 618 (1969), the Court found unconstitutional provisions denying welfare assistance to residents who had not resided for at least one year within the jurisdiction. Such provisions discriminate invidiously by "creat[ing] two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction." *Id.,* at 627. The Court rejected the justification that such a waiting period would deter migration of poor people into the state; such a

justification was directly at odds with the constitutional right of migration. *Id.* at 629. Nor was it relevant whether those migrating to the state in fact were seeking higher assistance payments or came for other reasons; the Court found that a State had no more right to deter those from settling in search of greater welfare assistance than it would to deter those seeking better educational opportunities. *Id.* at 631-32. The Court also rejected any justification of the measure based on past tax contributions; this "reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection." Such an apportionment of state services would violate equal protection. *Id.* at 632. Finally, the Court held that the states' legitimate concern for its fiscal integrity could not justify discrimination against new residents for the "saving of welfare costs cannot justify an otherwise invidious classification." *Id.* at 633.

In *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974), the Court followed *Shapiro* and invalidated an Arizona provision requiring a year's residence in a county as a condition of receiving nonemergency medical care at county expense. The Court framed the issue as whether the state's classification "penalized" persons who had recently migrated to the state. *Id.* at 256-57. If there were such a penalty the provision would be unconstitutional unless supported by a compelling state interest. *Id.* at 262-63. The Court found that just as the denial of the necessities of life in *Shapiro* operated to penalize recent migrants so did the denial of nonemergency medical care. The Court rejected the State's argument that since some medical services – indeed, emergency services

– were provided without waiting, the denial of non-emergency medical services could be distinguished from the complete denial as a *Shapiro*. *Id.* at 259-61. Nor was the State's interest in protecting its financial stability of sufficient strength to justify the discrimination against newcomers:

> The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect severely penalizes exercise of the right to freely migrate and settle in another State.

Id. at 263. Similarly, in *Dunn v. Blumstein*, 405 U.S. 330 (1972), decided before *Memorial Hospital*, the court invalidated a durational residency provision requiring one-year's residence before a new resident could vote.

On only one occasion has the Court upheld a durational residency requirement.[9] In *Sosna v. Iowa*, 419 U.S.

[9] In two summary rulings the Court has upheld one year durational residency requirements for resident tuition at state universities. *See Starns v. Malkerson*, 401 U.S. 985 (1971), summarily aff'g 326 F. Supp. 234 (Minn. 1970) (three-judge court); *Sturgis v. Washington*, 414 U.S. 1057 (1973), summarily aff'g 368 F. Supp. 38 (W.D. Wash) (three-judge court). Because of their summary nature, these precedents are of diminished importance. *Zobel v. Williams*, 457 U.S. 55, 64 n.13 (1982). Moreover, the Court consistently has viewed tuition residency requirements less as durational than as determining the bona fide residence of transient students. *See id.; Vlandis v. Kline*, 412 U.S. 441, 452-53 and n.9 (1973). In *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 260 n.15 (1974), the Court suggests that a waiting period for free higher education is not a penalty on migration because such an interest is of less significance than welfare or medical care.

393 (1975), the Court upheld the State's one year residency requirement for petitioners seeking a divorce decree when the respondent is not a state resident. In distinguishing *Shapiro*, *Dunn*, and *Memorial Hospital*, the Court noted that the State's interest in regulating domestic relations and protecting its divorce decrees from collateral attack was materially greater than the budgetary and recordkeeping interests advanced in the prior cases.[10] Alternatively, the case may be understood to find the interest in a speedy divorce of insufficient magnitude to amount to a penalty on migration.

In three more recent cases, the Court has expanded the equality principle in *Shapiro* to invalidate state provisions that distinguish between residents on the basis of length of residency without incorporating a durational residency requirement. These cases more clearly have less to do with constraints on migration and travel than with the unconstitutionality of distinctions between residents based on how long they have lived in the state.

In *Zobel v. Williams*, 457 U.S. 55 (1982), the Court invalidated an Alaska statute providing payments from oil revenues to all residents where the size of the payment was determined by years of residency. The Court found that such a measure could not even survive the minimum rationality test. The Court warned that an

[10] Referring to *Shapiro*, *Dunn*, and *Memorial Hospital*, the Court stated: "What those cases had in common was that the durational residency requirements they struck down were justified on the basis of budgetary or recordkeeping considerations which were held insufficient to outweigh the constitutional claims of the individuals." *Sosna*, 419 U.S. at 406.

approach that divided residents by years of residency threatened inequality over a large field:

> If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence – or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? Could states impose different taxes based on length of residence? Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible.

Id. at 64. Similarly, in *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), the Court invalidated state veterans preferences limited to veterans who had been state residents prior to a certain date or who had entered the military when a state resident. In *Hooper* the State provided a tax exemption for Vietnam veterans residing in the State prior to May 8, 1976. In *Soto-Lopez* the state provided a veterans preference for civil service hiring limited to veterans who entered the military when a State resident. In both cases, using different approaches, the Court found that the equal protection clause will not countenance distinctions based on length or incipiency of

residency. *Hooper*, 472 U.S. at 623; *Soto-Lopez*, 476 U.S. at 911.[11]

II.

In light of cases discussed above, the durational residency requirement in §11450.03 of the Welfare and Institutions Code must be invalid. Like *Shapiro*, the measure limits welfare and the basic necessities of life. As such it places a penalty on the decision of new residents to migrate to the State and be treated on an equal basis with existing residents. Although the measure does not eliminate all AFDC benefits, it produces substantial disparities in benefit levels and makes no accommodation for the different costs of living that exist in different states. In *Memorial Hospital* the measure was not saved because it

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[11] Defendants seek to distinguish *Zobel*, *Hooper* and *Soto-Lopez* because the statutes at issue in those cases created fixed, permanent distinctions between residents based on when they arrived in the state. *Soto-Lopez*, 476 U.S. at 909; *Hooper*, 472 U.S. at 617; *Zobel*, 457 U.S. at 59. Because the effect of §11450.03 is temporary, defendants argue it has a less significant impact on migration. However, the residency requirements invalidated in *Shapiro*, *Dunn* and *Memorial Hospital* were, by definition, temporary. Indeed, in *Soto-Lopez* the Court recognized, "[i]n previous cases, we have held that even temporary deprivations of very important benefits and rights can operate to penalize migration." *Id.* at 907. Moreover, the distinctions drawn in *Zobel* were no more fixed than here; in both situations as residents gain seniority they are granted greater benefits. In one sense the distinctions drawn in *Zobel* are more elaborate than here. Under §11450.03, after one year new residents are treated like everyone else. On the other hand, unlike the Alaska scheme, new California residents do not simply receive the same reduced payment but are further divided by state of prior residence.

pertained to some but not all medical services, so, too, this measure is not constitutional because it materially diminishes, without entirely eliminating, AFDC benefits.

Defendants suggest that the measure is not a penalty because the benefits provided are the same as those provided in the state of prior residence.[12] But under the cases the relevant comparison is not between recent residents of the State of California and residents of other states. Were this the comparison, the result in *Zobel* would be inexplicable since no other state provided a bounty to its citizens and thus Alaska treated new residents better in this respect than residents of other states. Similarly, it was of no significance in *Memorial Hospital* that the non-emergency care provided by Maricopa County may have been much superior to the medical care provided elsewhere. It is because the measure treats recent residents of California different than other *California* residents, and involves the basic necessities of life, that it places a penalty on migration. Moreover, the measure cannot fairly be said to provide the same payment as new residents could have received in the state of their prior residence since the cost of living, particularly housing, varies so substantially from state to state and generally is much higher in California than elsewhere.[13]

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[12] Defendants also argue that §11450.03 has not actually deterred the migration of any of the named plaintiffs. However, lack of evidence in the record of actual deterrence is of no significance if the statute creates a classification which serves to penalize migration. *Memorial Hospital*, 415 U.S. at 257-58; *Dunn*, 405 U.S. at 340-41; *Shapiro*, 394 U.S. at 634.

[13] According to the table of Fair Market Rents established by the U.S. Department of Housing and Urban Development,

Because §11450.03 places a penalty on migration, the defendants must show that the statute furthers a compelling state purpose. The interests advanced do not rise to that level.

If the purpose of the measure is to deter migration by poor people into the State, and it appears that this may be the purpose,[14] then the measure must be unconstitutional. *Soto-Lopez*, 476 U.S. at 904; *Zobel*, 457 U.S. at 62

California's housing costs are higher than any other state except Massachusetts. *See* Greenstein Decl. at 10. According to plaintiffs, in all but one of the forty-six states (including the District of Columbia) where AFDC benefits are lower than in California, housing costs are also lower. Thus, under §11450.03, new California residents migrating from 45 of these 46 states will face higher costs of living with no increase in their benefits. *Id.*, ¶ 18.

[14] There is evidence in the record to support the conclusion that the purpose of §11450.03 was to deter migration of indigents. First, on March 9, 1992, the California State Assembly adopted Senate Bill ("SB") 366, a legislative proposal which contained language nearly identical to that contained in §11450.03 (the sole substantive difference was the use of "could" in SB 366 instead of "would"). Assemblymember Costa was the principal Assembly author of that measure. During the debate on the Assembly floor, Mr. Costa stated:

> Realizing that in fact funds are short in California today, it makes a great deal of sense then to insure that incentives are provided for people from other parts of the country . . . that might be lured to California . . . for that purpose – to benefit from higher assistance. This legislation attempts to take care of that by requiring a one year residency requirement in California. . . .

Pls.' Ex. 11, 15: 17-26. The provisions of SB 366 were reflected in the Assembly's Budget Bill, Assembly Bill ("AB") 2303, and eventually enacted by the legislature in SB 485. McKeever Decl., ¶ 12. The legislative history of predecessor bills is relevant to discerning the legislative intent of a later enactment. *See Estate*

N.9; *Memorial* U.S. at 263-64; *Shapiro*, 394 U.S. at 629. But even if the purpose is only to conserve limited State funds in the hope that the State may do more for those who now and in the past have depended on the State, such a purpose, if laudable, is yet unconstitutional. For as the Court has stated more than once, the State may not identify a group of current residents as its "own" and seek to advance their interest and address their needs to the detriment of new residents. *Soto-Lopez*, 476 U.S. at 911; *Hooper*, 472 U.S. at 623; *Zobel*, 457 U.S. at 65; *Shapiro*, 394 U.S. at 632-33. The Supreme Court has never upheld a durational residency requirement whose sole justification was the State's desire to conserve its resources. If this

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of Cowart v. Nicklos Drilling Co., ___ U.S. ___, 112 S. Ct. 2589, 2595 (1992).

Second, after §11450.03 was enacted, the State renewed its waiver request to the United States Department of Health and Human Services. In a letter dated September 17, 1992, the State described the durational residency requirement enacted by the legislature as follows: "This proposal reduces the incentive for families to migrate to California for the purpose of obtaining higher aid payments." Pls.' Ex. 12 at 3. And, in the brief opposing the temporary restraining order, defendants list among the bases for implementation of the statute: "to prevent California from being a magnet for people seeking to increase the level of their public assistance benefits by moving to California." Def. Opp'n to TRO, December 21, 1992, 3:16-19. The government's current interpretation of a statute is entitled to less deference when in conflict with its initial position. *Cf. Watt v. Alaska*, 451 U.S. 259, 273 (1981).

Finally, such a purpose is inherent in a two-tier benefit structure. Because §11450.03 does not save money by cutting all recipients' benefits equally, but instead affects only the benefits of new residents, its very structure suggests a goal of deterrence.

durational residency requirement were valid, then so would a measure limiting new residents to the same level of medical, educational, police, and fire services they received in the state of prior residence. If the one year requirement were valid because of cost savings, then so would a two year or longer requirement, or a graduated scale as in *Zobel*. Such a division among residents, all of whom are in fact bona fide residents of the State, violates equal protection.

Finally, even if the measure were viewed not as a penalty but as similar to the bounty in *Zobel*, it would still be impermissible under the analysis in *Zobel*. If the measure intends to deter settlement into the state of persons who need welfare and seek a higher benefit, it is sensibly designed but has an unconstitutional purpose. If the measure simply seek to save costs, defendants fail to explain why new residents are better able to bear a reduction in benefits than other residents. For the measure applies to those who were on welfare in the state of prior residence and those who were not, those who need welfare when they arrive in California and those who come to that need months thereafter. It applies without regard to the cost of living in the state of prior residence or whether the applicant had access to other resources in the state of prior residence. Stripped of the unconstitutional purpose of deterring migration, the measure lacks a rational design. This group of residents is no better able to bear the loss of benefits than a group randomly drawn. The State may seek to conserve resources by reducing welfare benefits to all recipients or to some recipients on some rational, non-discriminatory basis. But unless the purpose here is to deter mitigation, there is no other rational basis

for the distinction drawn among applicants all of whom are California residents.

The court recognizes that the measure at issue here passed easily into law. And California is not alone in seeking to limit the welfare benefits of new residents. New York has adopted a different schedule of benefits for new residents; Wisconsin and Minnesota[15] also have received federal approval to implement such measures. Genest Decl., ¶ 2,3. According to defendants, other states may be considered a similar kind of limitation. *Id.* Nonetheless, the Supreme Court of the United States, in what is now a large body of law, has made clear that the constitutionally based rights to migration and equal treatment do not permit significant distinctions between new and old residents based on the duration or incipiency of their residency. Therefore the State may not deny certain of its residents full welfare benefits simply because of the recency of their residency.

In short, under *Shapiro* and *Memorial Hospital,* the court finds that the two tier benefit schedule in §11450.03 penalizes new residents because of the recency of their migration to the State. The State's interest in reducing welfare costs is not sufficient to justify the disparate treatment of this class of needy residents.

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[15] In June of 1992, the Minnesota durational residency provision was declared unconstitutional by the Court of Appeals of Minnesota. *Mitchell v. Steffen,* 487 N.W.2d 896 (1992).

III

Plaintiffs demonstrate that they face the possibility of irreparable injury if the injunction is not issued.[16] All of plaintiffs have been unable to locate housing in California that is affordable to them on the reduced AFDC payment. *See* Green Decl., ¶ 6,7; Venturella Decl., ¶ 21; Bertollt Decl., ¶ 23.

Plaintiffs' motion for preliminary injunction is granted. The Court orders:

(1) Pending judgment in this action, defendants and their agents, assignees and successors in interest are enjoined from implementing a) California Welfare and Institutions Code § 11450.03, b) regulations promulgated pursuant to § 11450.03, including but not limited to M.P.P. E.A.S. § 89-402.4, c) All-County Letter ("ACL") 92-98 and All-County Information Notice ("ACIN") I-54-92 to the extent that the ACL or ACIN deny standard California AFDC benefits to members of the plaintiff class or determine an AFDC benefit in whole or in part by reference to the AFDC grant in any other state or territory;

(2) Within ten calendar days of the issuance of this order, the defendants shall issue an All-County Letter notifying the counties and county welfare directors of this order, and instruct them to stop implementation of

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[16] To obtain a preliminary injunction, a party must show either (1) likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor. These are not separate tests, but the "outer reaches of a single continuum." *Los Angeles Memorial Coliseum v. National Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980).

the policy enjoined by this order. Defendants shall provide plaintiffs' counsel with a copy of this All-County Letter.

(3) Plaintiffs will be permitted to proceed in this matter without posting bond or any other security.

IT IS SO ORDERED.

Dated: 28 January 1993.

/s/ David F. Levi
DAVID F. LEVI
United States District Judge

DECLARATION OF DENNIS HORDYK

I, Dennis Hordyk, declare:

1. I am the Assistant Director of the Department of Finance. The Department has overall responsibility for compilation of the Governor's Budget for the State of California.

2. The AFDC program is funded from the state general fund revenues and federal funds, on a 50/50 match basis; the State pays 95 percent of the non-federal share of the AFDC program costs. In the 1992-93 budget, the state's General Fund revenues total approximately $40.9 billion.

3. For the fiscal year ending June 30, 1993, the Department of Finance is projecting a $2.1 billion *deficit* in the state's general fund. The budget deficit is so severe that the *state will have no reserve* available to cover the costs of unforeseen events.

4. The current 1993-94 budget plan resolves the $2.1 billion 1992-93 deficit during the 1993-94 fiscal year. The Department of Finance is projecting that revenues will actually decline by over $1 billion from 1992-93. This will be the second year of revenue declines as revenues declined from 1991-92 to 1992-93 by approximately $1.1 billion. This is a result of continuing poor performance in the economy. These revenue declines will require reductions to the 1993-94 fiscal year budget plan beyond those already taken in the 1992-93 budget and the current 1993-94 budget plan.

5. I understand the U.S. District Court has temporarily restrained implementation of Welfare and Institutions Code section 11450.03, as enacted by Chapter 722 of the Statutes of 1992. Failure to implement Section 11450.03 would result in additional, unbudgeted state General Fund costs in the AFDC program of $8.4 million in fiscal year 1992-93, and $22.5 million in fiscal year 1993-94.

6. There are no funds appropriated by the 1992-93 state budget to pay for this increase in expenditures in the AFDC program.

7. As indicated above, there are simply no available state general fund revenues to fund a supplemental or deficiency appropriation to meet this additional expense.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 14, 1993, at Sacramento, California.

/s/ Dennis Hordyk
DENNIS HORDYK

I, John D. Healy, declare as follows:

1. I am the Chief Deputy Director of the California State Department of Social Services. As Chief Deputy Director I am responsible for supervising the implementation of federal and state laws, formulating state regulations setting administrative policy relative to welfare benefit payments and a number of social services programs such as Aid to Families with Dependent Children (AFDC).

2. AFDC is California's largest welfare program. In fiscal year 1992-1993 it will provide public assistance to 2,458, 600 people per month. In fiscal year 1992-1993 AFDC grants in California will total $5.9 billion dollars. Of that total amount, $2.8 billion dollars in funds are derived from the California state general fund.

3. During the 1980's, California's AFDC caseload grew by an average annual percentage rate of 3.7 percent. This growth rate substantially accelerated in California since fiscal year 1988-1989. Approximately 636,500 families were receiving AFDC benefits in the fiscal year 1988-1989. This number grew to 706,500 cases in fiscal year 1990-1991, an increase of 70,000 families, or 11 percent of the entire AFDC caseload. The total AFDC caseload increased to 790,406 cases, an 11.9 percent increase in fiscal year 1991-1992. The Department projects a caseload increase of 7.6 percent for fiscal year 1992-1993, to 850,600 families.

4. California has the second highest grant level in the continental United States. California accounts for 27 percent of all money spent nationwide on the AFDC program, and 17 percent of the national AFDC caseload, though it has only 12 percent of the nation's population.

5. In a survey conducted by the Department's Statistics Services Bureau in April of 1990, it was found that 6.6 percent of the existing AFDC caseload resided in another State within one year of application of AFDC benefits in California.

6. For the 1992-1993 fiscal year the Department projected that implementation of Welfare and Institutions Code Section 11450.03 will reduce total AFDC expenditures by an amount of $17.5 million dollars. Of this total reduction, California general fund expenditures will be reduced by $8.4 million dollars.

7. For the 1993-1904 fiscal year the Department projects that implementation of Welfare and Institutions Code Section 11450.03 will reduce total AFDC expenditures by an amount of $47.037 million dollars. Of this total reduction, California general fund expenditures will be reduced by $22.485 million dollars.

8. The immense gap between statewide revenues and expenditures has forced the state and the Department to identify areas where expenditures can be reduced, and to make reductions in program allocations. Though Welfare and Institutions Code Section 11450.03 by itself will not solve the State's fiscal problem, it is a necessary and prudent fiscal measure to achieve a balanced budget.

9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 1993 at Sacramento, California.

/s/ John D. Healy
John D. Healy

I, Michael C. Genest, declare as follows:

1. I am the Deputy Director of the Welfare Programs Division of California Department of Social Services. The division administers the Aid to Families with Dependent Children (AFDC) program, and other programs. From 1981 through 1991, I was employed by the California Legislative Analyst's Office, where I specialized in health and welfare programs, including AFDC. In 1986, I assumed direction over the welfare and employment section of the Legislative Analyst's Office. I directed the research, analysis and writing of a publication entitled: "California's AFDC program".

2. California is not unique in implementing a scheme of benefit levels for new residents based upon a client's prior state of residence. The State of New York has a general assistance schedule of benefits paid to new residents based upon rates paid in the prior state of residence if the principal earner does not have a recent connection to the labor force. For the first six months, new residents receive 80% of the grant in the previous state of residence or 80% of the New York grant whichever is less.

3. California's Family Relocation Grant law is within the mainstream of welfare reform legislation in the United States. California, Wisconsin, and Minnesota have received federal permission to implement a residency based grant program and other states are moving towards a residency based grant program.

4. Working in conjunction with other provisions of law, one effect of Welfare and institutions Code Section 11450.03 will be to promote employment among new California residents. A gap exists between the higher California needs standard, which applies to all AFDC cases, and the lower maximum aid payments (MAP). However, since net countable income (e.g.,

wages, unemployment insurance benefits, social security income, etc.) is deducted from the needs standard only, families may keep a larger share of their other income before the MAP is affected. For example, a family of three in California has a need standard of $703 and a MAP of 624, creating a gap of $79 which the family can keep as additional income before it affects their aid payment. A family of 3 from Oregon has a California need standard of $703 and an Oregon MAP of $460, creating a gap of $243. This family will get to keep this much more of their income than the California family before aid is affected. Thus, an incentive to close the gap with earned income is created.

Additionally, California has suspended application of the 100 hour rule pursuant to its federally approved Demonstration Project. Suspension of the 100 rule [sic] will create greater incentives to work through removal of a barrier to self-sufficiency. Prior to enactment of this provision recipients working 100 hours or more per month were ineligible for AFDC benefits.

5. Under current law, California will pay the California Special Needs Allowance (SNA) to all AFDC families who are entitled to it. Many states do not have a SNA for homeless assistance. In California, SNA provides an eligible recipient to up to $30 per day for temporary shelter and up to 160% of MAP for permanent housing.

6. Under current law, all persons impacted by Welfare and Institutions Code Section 11450.03 are eligible for full Medical benefits. Under current law, all persons impacted by Welfare and Institutions Code Section 11450.03 are eligible for Food Stamps. In fact, for every three dollars an AFDC grant is reduced by operation of Welfare and Institutions Code Section

11450.03, Food Stamp benefits are increased by approximately one dollar.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 1993 at Sacramento, California.

/s/ Michael C. Genest
Michael C. Genest

Legislative Counsel's Digest of Senate Bill 485, Chapter 722, No. 10 West's Cal. Legis. Service, p. 2898

Existing law establishes the Primary Intervention Program, pursuant to which the State Department of Mental Health awards grants for the provisions of various school-based mental health services to children. funding for the grants is made from the Mental Health Primary Prevention Fund and from the General Fund and other sources.

Existing law establishes the School-Based Early Mental Health Intervention and Prevention Services for Children Matching Grant Program, pursuant to which the Director of Mental Health awards matching grants to local educational agencies to pay the state share of the costs of providing school-based early mental health intervention and prevention services to eligible children.

This bill would make various revisions in the programs, including funding criteria, and would provide that grants for the Primary Intervention Program shall be funded from funds appropriated for the School-Based Early Mental Health Intervention and Prevention Services for Children Matching Grant Program.

Existing law provides for the placement of a person with developmental disabilities found incompetent to stand trial in a state developmental center or other appropriate facility or outpatient program and for the referral and treatment of persons who are incompetent to stand trial due to a mental disorder.

This bill would revise those procedures.

By requiring a higher level of service of counties implementing these provisions, this bill would impose a state-mandated local program.

Existing law establishes the Patients' Rights Office within the State Department of Mental Health to provide various services on behalf of mental health patients in the state.

This bill would delete the office and instead require the department to contract with the protection and advocacy agency to provide specified patients' rights advocacy services beginning January 1, 1993, and would provide that those services may be provided directly or indirectly through subcontracts.

Existing law provides for the Aid to Families with Dependent Children (AFDC) program, pursuant to which assistance, including cash grants and noncash benefits, is provided to eligible low-income individuals. Existing law also makes AFDC recipients automatically eligible for benefits under the Medi-Cal program. The AFDC program is administered by county welfare departments under the supervision of the State Department of Social Services, and is funded in part by the federal government.

This bill would temporarily reduce aid grants by specified amounts.

Under the existing Aid to Families with Dependent Children-Foster Care program, eligible providers are reimbursed for the provision of services to eligible AFDC beneficiaries.

This bill would revise the schedule of reimbursement under the AFDC-FC program, and would revise group home reimbursement eligibility standards.

Under the State Supplementary Program (SSP) for the aged, blind, and disabled, payments are made to eligible individuals and married couples in specified amounts.

This bill would with exceptions, reduce the SSP payment schedules for a specified period.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

The bill would revise the schedule of benefits under the IHSS program, and would revise the method of providing services under the IHSS program.

To the extent this bill would increase the responsibility of the counties to implement the IHSS program, this bill would impose a state-mandated local program.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons.

California Budget Act of 1992, Statutes 1992, Chapter 587, No. 9 West's Cal. Legis. Service, p. 1832

Item 0450-101-001 – For local assistance, State Block Grants for Trial Court Funding. I reduce this item from $689,336,000 to $483,636,000 by reducing:

(a) 10-Block Grants for Trial Courts from $635,901,000 to $430,201,000, and delete Provision 3.

I am reducing the $205,700,000 augmentation for Trial Court Funding Block Grants because I plan to veto AB 1344, which provided for related revenue increases to pay for this augmentation. The proposed revenues were not sufficient to offset the increased block grants in future fiscal years.

I am deleting Provision 3, which would have provided for reductions in the appropriation for any shortfall in civil filing fee revenues related to the trailer bill legislation.

Item 0500-001-001 – For support of Governor's Office. I reduce this item from $8,335,000 to $7,377,250 by adding:

Unallocated Reduction – $957,750

I am reducing $957,750 from this item to reflect a 15 percent cut in the appropriation for support of my office. I take this action because of the unprecedented fiscal constraints and limited resources in the General Fund.

Item 0530-001-001 – For support of Secretary for health and Welfare Agency. I delete Provision 1.

I am deleting Provision 1 which relates to HIV-related General Fund expenditures. While I have made

great efforts to protect public health programs from severe reductions in the 1992-93 budget, this language is inappropriately restrictive in requiring the Health and Welfare Agency to implement a maintenance of effort requirement, which would preclude in reductions to other public health programs.

As a more appropriate manner of addressing any potential maintenance of effort issues, I am retaining provision (f) which was added to Control Section 27.00 of this act. This provision would allow the Department of Finance to augment funds for HIV-related programs to ensure compliance with the requirements for Ryan White CARE Act Title II funding.

Item 0540-001-001 – For support of Secretary for Resources. I delete Provision 3.

I am deleting Provision 3, which requires the Director of Finance, prior to authorizing any expenditures from this item, to reduce the amount appropriated in this item by the same percentage as the General Fund reduction made to the budget of the California Conservation Corps contained in Item 3340-001-001. This language is an infringement on the Executive Branch's budget development process and restricts my authority to administer a budget that reflects my spending priorities.

Item 0750-001-001 – For support of Office of the Lieutenant Governor. I reduce this item from $1,260,500 to $1,222,500 by reducing:

(a) 10 – General Activities from $1,330,500 to $1,292,500.

I am reducing this item by $38,000 in recognition of the unprecedented fiscal constraints and limited resources in the General Fund. I take this action as a matter of equity because the budgets for nearly all state departments funded from the General Fund have been reduced through previous legislative action.

Item 0820-001-001 – For support of Department of Justice. I delete Provision 4.

I am deleting Provision 4 which would prohibit the department from creating a new program or shifting funds in an amount exceeding $100,000 in specified program areas unless the Director of Finance receives approval from the Chair of the Joint Legislative Budget Committee, 30 days prior to such action. This language is unnecessarily restrictive and interferes with the department's and the Administration's ability to effectively manage these programs.

Item 0840-001-001 – For support of State Controller. I reduce this item from $61,763,000 to $60,763,000 by increasing:

(cx) Unallocated reduction from $ – 4,064,000 to $ – 5,064,000.

In recognition of the State's unprecedented fiscal constraints and in order to make the unallocated reduction taken by the State Controller's Office more closely approximate the reductions that nearly all other General Fund departments will absorb, I am increasing the Unallocated Reduction by $1,000,000.

Item 0860-001-001 – For support of State Board of Equalization. I delete Provision 4.

I am deleting Provision 4, which would require the expenditure of resources to initiate a strategic plan to consolidate the state's tax administration activities if subsequent legislation is enacted providing the authorization.
